

THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

THE PEP BOYS-MANNY, MOE &
JACK OF CALIFORNIA¹

Employer

and

Case 21-RC-20103

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,
INDUSTRIAL AND ALLIED WORKERS OF AMERICA,
LOCAL 166, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as corrected at the hearing.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act:

5. The following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time master technicians, technicians, mechanics and installers employed by the Employer at its facility located at 23470 Sunnymead Boulevard, Moreno Valley, California; excluding all other employees, cashiers, customer service representatives, auto parts delivery drivers, service advisors, sales associates, parts managers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Petitioner seeks to represent a unit composed of all full-time and regular part-time master technicians, mechanics and installers, employed by the Employer at its facility located at 23470 Sunnymead Boulevard, Moreno Valley, California (hereinafter called the Moreno Valley store).²

The Employer contends that the unit sought by the Petitioner is inappropriate, and that the only appropriate unit must be a wall-to-wall unit including all hourly employees at the store. A wall-to-wall unit would include the following classifications: master technicians, technicians, mechanics, installers, cashiers, customer service representatives, auto parts delivery drivers, and sales associates. The Petitioner, contrary to the Employer, also contends

that the service advisor, the parts manager and the assistant parts manager are supervisors within the meaning of Section 2(11) of the Act, and should therefore be excluded from any appropriate unit.³

The record reflects that there are three master technicians, six technicians, one mechanic, four installers, 12 sales associates, three customer service representatives, one cashier, five auto parts delivery drivers, one parts manager, one assistant parts manager, and three service advisors employed at the Employer's facility at issue. There is no history of collective bargaining among any of the Employer's employees.

The Employer has many retail stores, including the Moreno Valley store, which provide automobile repair and maintenance services as well as installation and sale of automotive parts and accessories. The Moreno Valley store is divided into four different departments: the service department, parts department, accessory department⁴, and the tire department. Each department has its own supervision with the service manager in charge of the service department, the parts manager in charge of the parts department, and the first assistant manager in charge of the accessories department.⁵ Each of these managers report to the store manager, who oversees all four departments. All the departments at the Moreno Valley store are open during the same business hours.⁶

² The unit sought by the Petitioner is as amended at the hearing.

³ Both parties agree that the following classifications are supervisors as defined in the Act and should be excluded from the unit: store manager, service manager, first assistant service manager, sales floor manager, and first assistant store manager.

⁴ This department includes the retail sales floor.

⁵ The record does not reflect who is in charge of the tire department.

⁶ The store is open Monday through Friday 7 a.m. to 9 p.m., Saturdays 7 a.m. to 8 p.m. and Sundays 9 a.m. to 6 p.m.

When a customer enters the Moreno Valley store, under the "banner service program", the associates are expected to approach the customer. Most frequently the associate that approaches the customer is a service advisor who then uses a diagnostic card to solicit information from the customer about the car. That information is written down on a work order form which is then assigned to the proper associate, technician, mechanic or installer, depending on the customer's order.

When writing up the work order, the service advisor orders through the computer any parts that are needed for the work to be performed. On occasion when the service advisor is not sure regarding a necessary part, he or she will ask someone in the parts department or the service department for assistance. The appropriate technician, mechanic or installer is then assigned the work order and performs the necessary work. Once the work is completed, the work order is converted into a service invoice, and it is held at the service desk until the customer returns to pick up the vehicle.

When the customer returns, the customer service representative (CSR) rings up the invoice and completes the invoice as well as warranty forms. The CSR collects the payment and gives the customer the keys to the car.

Some time after the customer leaves, the CSR calls the customer to inquire about their satisfaction with the work performed. If any negative feedback is obtained, it is reported to the service manager or service advisor.

The master technician, technician, mechanic, and installer make up the service employees. The service employees work under the service advisor and the first assistant service manager, who in turn work directly under the service manager.

The master technician is the most skilled position in the service department. A master technician is generally required to possess a total of eight auto service excellence (ASE) certifications. These include the areas of brakes, alignment and suspension. Some master technicians also possess a smog license to perform smog checks. The duties of a master technician include diagnostic work, smog work, and other detailed, highly skilled jobs. The technicians are required to possess two ASE certifications⁷ and provide their own tools. They engage in diagnostic work and other highly skilled labor intensive jobs.

Mechanics typically engage in work involving brakes, alignments, light tune ups, and air conditioning.

They are not required to possess any ASE certifications for their job duties. Mechanics are also required to provide their own tools. There are two levels of installers, A and B.⁸ Typically installers engage in the work of installing tires, batteries, windshield wipers, and other accessory items, as well as alignment work. The installer is an entry level job which requires no ASE certifications.

CSR's primary function is to collect the money from retail sales and service invoices. They also assist customers in completing applications for credit and inputting the information into the computer. They also sometimes have a role in ordering special parts. The position of cashier is an entry level job that performs similar duties as a CSR, but carries less responsibility.

⁷ The record does not state what the certifications are in.

⁸ The record reveals that A and B installers do not perform the same type of work, but does not distinguish the differences between the two categories.

Auto parts delivery drivers (APD drivers) deliver and pick up parts. The delivery drivers also unload the parts from their vehicles, and sometimes seek assistance from the service employees. The delivery trucks are checked by the service employees who also on occasion help the drivers wash the trucks.

The service advisors converse with the customers and ascertain their needs. They prepare the work orders, pick the parts for the service department, then assign the work order to the appropriate associate, technician, mechanic or installer.

The parts manager makes sure that the necessary parts are ordered and received. The parts manager communicates with the service department to determine what parts are needed. The parts manager also inputs the invoices of parts obtained from outside sources into the computer. The position of assistant parts manager has been eliminated. The individuals who were at one time called "assistant parts managers" are now classified as full time sales associates. They perform the same tasks as other sales associates.⁹

Sales associates, which includes parts personnel, stock merchandise, direct customers to the correct area of the store, and encourage customers to have parts installed at the store's service department. Sales associates, as well as other service department employees, inspect and mark tires with chalk where any damage is found.¹⁰ Any damaged parts, including tires, are returned to the parts counter by sales associates.

⁹ Since this title no longer exists, all references to sales associates will include those who at one time were classified as assistant parts managers.

¹⁰ The record does not reveal how often this occurs. Although once the problems are detected, the vehicle is given to the service employees for a preventive maintenance inspection.

Full-time sales associates are cross trained in other areas of the store to obtain a better understanding of other positions. The full-time sales associates are provided with training on invoicing, and are placed at the service desk to get a feel for the service department.

On rare occasions when the service department is extremely busy, the full time sales associates will help in installing batteries, tires, and wiper blades, although this occurs only if the sales associate is trained to perform installations.

The record reveals that there have been five employees who have transferred departments, four of whom work or worked at the Moreno Valley store.¹¹ One individual transferred from a mechanic to a salesperson. Another individual who previously worked as both an installer and a salesperson was transferred back to an installer position upon his return to the Moreno Valley store. Another individual transferred from the position of sales person to service advisor. Another individual, who requested a transfer, was transferred from technician to salesperson. Finally, another individual went from the position of service advisor to a sales associate.

Since service employees are not allowed to retrieve parts from the stock, employees who work in the parts department must bring them to the service department. Parts employees also remove defective parts from the service department to be returned. When a mechanic needs a part for an automobile, he or she informs the service advisor, who in turn informs the parts department.

Installers, as well as sales associates, APD drivers, CSRs, cashiers, service advisors, and parts managers are all paid on an

¹¹ The record does not reveal if all of these individuals are still currently employed by the Employer at the Moreno Valley store.

hourly basis. Mechanics, technicians, and master technicians, however receive compensation for their work beyond their hourly rate. Thus, each of the employees in these three classifications earn a base hourly rate, and in addition are able to earn double time if they work more than 40 hours, which is known as "flag time".

The service department is attached to the main portion of the store on the left hand side. The service department may be entered through either the side or the front doors. A brick wall separates the sales floor area from where the service employees work. Beyond the brick wall is a service desk area, glass walls, and a glass door. The service department also has its own restroom.

The service department employees wear a uniform consisting of tan pants and a white shirt, while the installers wear brown.¹² The first assistant managers and the service managers wear white shirts. The store manager and first assistant wear white shirts, the sales floor associates including CSRs wear black shirts, the delivery drivers wear red shirts, and the parts manager and sales associates wear black shirts.

All employees use the same lunch and break area located in the stock room in the parts department. They also use the same time clock located in the manager's office. Service employees, sales associates, CSRs, and cashiers work the same morning or afternoon shifts.¹³ The delivery drivers typically work both the morning and afternoon shifts, but generally not past 8 p.m. All hourly employees receive the same health and life insurance plans. All employees have

¹² The record does not reveal whether the installers' shirts and/or pants are brown.

¹³ These shifts are either 7 a.m. to 4 p.m., 8 a.m. to 5 p.m., 11 a.m. to 8 p.m. and 1 p.m. to 10 p.m.

the same vacation policy and sick leave policy, although master technicians', technicians' and

mechanics' vacation and sick leave benefits are enhanced because of their ability to earn flag time compensation. The 401K program is available to all hourly employees. In addition, all hourly employees receive a yearly performance evaluation.

The primary issue presented is whether the unit sought by the Petitioner is an appropriate unit for collective-bargaining purposes. In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. P.J. Dick Contracting, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." Dezcon, Inc., 295 NLRB 109, 111 (1989). A petitioner must demonstrate that the employees in the petitioned-for unit share a sufficient "community of interest" so as to constitute an appropriate bargaining unit. Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). Factors which determine this community of interest include:

[S]imilarity in methods of work or compensation, similar hours of work, employment benefits, common supervision, similar qualifications, training and skills, similarity in job functions and the location where job duties are performed, the amount of interaction and contact with other employees, integration and interchange of work functions with other employees and the history of bargaining.

Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

Applying the above enumerated factors to this case demonstrates that the employees in the petitioned-for unit share a

close community of interest so as to constitute an appropriate unit, and that service employees do not have such a close community of interest with the CSRs, cashiers, APD drivers, service advisors, parts managers, and sales associates, to require their inclusion in the appropriate unit.

As opposed to the other classifications, the service employees work in a separate and distinct area of the store. The service area where the service employees work is separated from the retail portion of the store by a brick wall. There is a restroom in the area that the service employees use, while the other employees use the restrooms inside the store.

In addition, the service employees wear different colored uniforms than the rest of the employees. Also, the master technicians, technicians and mechanics are able to earn more than their hourly wage based on productivity, while other employees do not have this option.

The service employees are the only employees directly supervised by the service advisor and first assistant service manager. Although the store manager does oversee all four departments, the service employees have much more contact with the service advisor and first assistant service manager who oversee only the service employees.

The record reveals that the service employees have minimal interchange with the rest of the hourly employees. Other than dropping off the keys to the cars, the service employees have very little interaction with CSRs and cashiers. The parts manager's contact with the service employees consists of retrieving and dropping off the necessary parts. Except for helping unload a truck on occasion, the service employees do not have any contact with the ADP drivers.

The record further reveals that the duties of the other employees do not overlap with those of the service employees. None of

the other employees actually engage in master technician, technician, or mechanic work, since they do not have the requisite qualifications. Although in emergency situations sales associates aid in the installation of parts, they are not formally trained in that type of work, nor is it a pre-requisite to their positions.

Moreover, the work engaged in by master technicians and technicians requires special certification to perform repairs and installations on vehicles. While mechanics and installers do not need to obtain special certification, they also engage in duties relating to automobile repair in close proximity to the master technicians and technicians. Mechanics and technicians are also required to provide most of their own tools for their work, while the job duties of CSRs, cashiers, parts manager, ADP drivers, and service advisors do not include working on cars or supplying their own tools.

In Montgomery Ward & Co., 225 NLRB 547 (1976), the Board found the petitioned-for unit of automotive service shop employees appropriate. The Board based this decision on various factors including that service shop employees rarely enter the sales floor area; their skill, knowledge, and certification in the automobile repair work; their ability to earn higher wages than other employees; and their uniform. As in the instant case, the Board noted that the shop employees' duties mainly consisted of manual work on automobiles, as compared to the other employees' duties.¹⁴ The service employees at the Moreno Valley store possess similar distinctive characteristics

¹⁴ The Board also noted that there were factors present in the case that may have made an overall auto service center unit appropriate, but there were also other factors that made the petitioned-for unit an appropriate one as well.

from the other employees, including performing manual labor on cars requiring special skills and certifications.¹⁵

The Employer argues that all the hourly employees at its Moreno Valley store share a community of interest, making a wall-to-wall unit the only appropriate unit. The Employer contends that all hourly employees are functionally integrated inasmuch as they are engaged in the common function of sales and installation of automotive parts and accessories and automotive service for retail customers. Although CSRs, cashiers, service advisors, sales associates, and parts managers engage in the actual selling of services and accessories, the service employees as well as the ADP drivers do not. The service employees perform different functions than the other hourly employees. The service employees fix, install, and repair automobiles, and they have minimal contact with the other hourly employees. The Employer's organizational structure places the service employees in their own group, apart from the other employee classifications.

The Employer, in support of its contention, notes the significant employee interchange among employees, including transfers. The record reflects, however, that special circumstances prompted each of the transfers.¹⁶ Thus the circumstances surrounding the transfers, which occurred infrequently, does not compel a wall-to-wall unit.

¹⁵ Although there may be an argument for a finding of a different unit, all that is required is that the unit be an appropriate unit, not the most appropriate unit. P.J. Dick, supra.

¹⁶ One individual who worked as a salesman, transferred to another store. When he transferred back to the Moreno Valley store, he was placed as an installer because he had previously worked in that position and one was available. Another individual who transferred from technician to salesperson, requested this transfer. He had previously worked as a service advisor and was moved to technician because of his skill when his position was eliminated. There was similar testimony about the other transfers, where the employees had previous experience in another position and requested to be moved.

The Employer further argues that case authority supports its position that a wall-to-wall unit is the only appropriate unit, citing the trilogy of Sears cases in support of this contention.¹⁷ Although those cases deal with automobile service employees, they are distinguishable because they concern a department store that also has an automotive center. Because of the store configuration, the

Board in the Sears cases based its decisions on various factors not present in the instant case.¹⁸

Based on the above and the record as a whole, it is concluded that cashiers, customer service representatives, auto parts delivery drivers, sales associates, service advisors, and parts managers, do not share such a close community of interest with employees in the petitioned-for unit so as to mandate their inclusion in the unit. I find, therefore, that the petitioned-for unit is an appropriate unit for collective-bargaining purposes. Montgomery Ward & Co., supra; Dodge City of Wauwatosa, 289 NLRB 459 (1986).

¹⁷ The Employer cites Sears Roebuck and Co. (Sears I), 182 NLRB 609 (1970), Sears Roebuck and Co. (Sears II), 261 NLRB 245 (1982) and Sears Roebuck and Co. (Sears III), 184 NLRB 343 (1970).

¹⁸ In Sears Roebuck and Co., 182 NLRB 609 (1970), the Board found that a unit of all employees in the automotive center and gas island appropriate. This unit was appropriate since the mechanics and operators engaged in selling functions, and salesmen engaged in their work in the service area. In Sears Roebuck & Co., 261 NLRB 245 (1982), the Board found that a unit of automobile center employees was an appropriate unit. In making this determination, the Board noted that there were factors which made the petitioned for unit inappropriate, but that the inquiry is whether the petitioned for unit is an appropriate unit, not the most appropriate unit. Lastly, in Sears Roebuck and Co., 184 NLRB 343 (1970), the Board again found that an appropriate unit consisted of all the automobile center employees. In concluding this, the Board noted such factors as the common supervision of all the employees, and that the salesmen worked in the same area as the installers.

In light of this conclusion, the supervisory status issues are moot. However, if the unit found appropriate here is ultimately deemed to include a wall-to-wall unit, I would find that service advisors, parts managers, and assistant parts managers are not supervisors within the meaning of Section 2(11) of the Act. There was no evidence presented that these classifications possess the authority to hire, fire, conduct performance evaluations, recommend pay increases, engage in discipline of employees, grant time off, promote or recommend employees for promotions and transfer or recommend the transfer of employees.

There are approximately 14 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are those employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike

which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to this election should have access to a list of voters in the unit and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Joint Employers with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California, 90017, on or before August 30, 1999. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement herein imposed.

NOTICE OF POSTING OBLIGATIONS

According to the Board's Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be

filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employer from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 7, 1999.

DATED at Los Angeles, California, this 23rd day of August, 1999.

/s/William M. Pate
William M. Pate
Acting Regional Director, Region 21
National Labor Relations Board

401-7550
177-8520